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THE COAL ROADS DECISION. — It has been remarked many times that the common law may be relied upon to meet, by the continual development of its fundamental principles, the complex conditions created by the constant evolution in the industrial organization. One of the most striking of modern instances of this capacity of growth in the common law is the astonishing progress in the working out of the detail of the exceptional law governing the conduct of public callings. So dependent are all commercial activities upon adequate service by the great companies which conduct these public employments, that the general situation demands the stern code that all who apply shall be served with adequate facilities for reasonable compensation, and without discrimination. Enforcement of all branches of this law is necessary at all times; but the commercial community is most interested to-day in the prevention of personal discrimination. It is established now, past all qualification, that it is the duty of the common carrier to serve all alike who ask the same service, so that all shippers from a given point may compete with each other in distant markets upon equal terms. For it is now recognized that the slightest differences in the rate may result in the long run in building up one concern and in ruining its rival.

This public condemnation of personal discrimination must have influenced the judges in coming to the striking decision handed down a few weeks ago by the United States Supreme Court. *New York, New Haven, and Hartford Railroad et al.* v. *Interstate Commerce Commission*, U. S. Sup. Ct., Feb. 19, 1906. The complaint in that case was filed by the Attorney-General under the provisions of the Interstate Commerce Act which forbid personal discrimination, charging that traffic was being moved at less than the published rates. It was shown that the Chesapeake and Ohio Railroad had sold to the New York, New Haven, and Hartford Railroad sixty

thousand tons of coal to be delivered to the buyer at $2.75 per ton; and it was averred that the price of the coal at the mines where the Chesapeake and Ohio bought it and the cost of transportation from Newport News to Connecticut would aggregate $2.47 per ton, thus leaving to the Chesapeake and Ohio only about twenty-eight cents a ton for carrying the coal from the Kanawha district to Newport News, whilst the published tariff for like carriage from the same district was $1.45 per ton. Upon these facts the United States Supreme Court decided that there was in effect the evil of personal discrimination against other shippers in this arrangement; and the final decree therefore was that the Chesapeake and Ohio was perpetually enjoined from taking less than its published tariff of freight rates, by means of dealing in the purchase and sale of coal.

The paramount duty of the common carrier is to the public; it must do nothing inconsistent with that obligation; and to carry its own goods at lower rates than it carries those of the shipping public will enable it to market those goods at lower prices than other shippers can make. Indeed it was a fact shown in the record of this case that the Chesapeake and Ohio, as a result of its being a dealer in coal as well as a carrier, had become virtually the sole purchaser and seller of all coal produced along its line of road. As the court points out, the inevitable tendency will be toward such monopoly if the common carrier is permitted both to deal in a commodity and to carry it. As a carrier may reduce or entirely eliminate the profit upon transportation to market in making its calculations as to the margin of profit that it will require in buying and selling the commodity, the result must be that no other person can compete on equal terms with the carrier in his capacity as dealer. The court is content, it seems, to decide no more at present than that the carrier must charge itself in its operations as a dealer with its own schedule rates as carrier; but much of its reasoning, if carried to the logical conclusion, would forbid the railroads to take the inconsistent positions of dealers and carriers. And indeed it seems that the possibilities of evil cannot be eradicated unless the common carrier is forbidden altogether to deal in the commodities which it transports.[1] B. W.

EFFECT OF ESTOPPEL UPON A CONTRACT VOID FOR USURY. — Much of the conflict as to the effect of usury upon a contract is unquestionably due to the differences in the usury statutes in the various jurisdictions. But this will not account for the many irreconcilable decisions in a single state, — in New York, for example, where, in spite of a very explicit statute declaring usurious contracts altogether void,[1] the authorities seem hopelessly at odds. It is believed that the differences in judicial opinion on such an apparently simple point are due to a failure by many courts to distinguish between situations where it is proper to apply the doctrine of equitable estoppel and where it is not. A recent New York case has held that in an action on a note void under the usury statute, the maker may be estopped to set up his defense of usury. *Hungerford Co.* v. *Brigham*, 95 N. Y. Supp. 867. This

[1] This radical principle may be found expressed in Attorney-General *v.* Great Northern Ry., 29 L. J. Ch. 794, and in Hannah *v.* People, 198 Ill. 77.

[1] 1 Rev. Stats. 772, § 5; as amended, Laws 1837, c. 430, § 1.